UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 22-10964-mg

- x

In the Matter of:

CELSIUS NETWORK LLC,

Debtor.

- x

United States Bankruptcy Court

One Bowling Green

New York, NY 10004

October 2, 2023

2:13 PM

B E F O R E :

HON MARTIN GLENN

U.S. BANKRUPTCY JUDGE

ECRO: JONATHAN

HEARING re HYBRID CONFIRMATION HEARING.

HEARING re Hybrid Hearing RE: CEL token Settlement under Bankruptcy Rule 9019, if applicable.

HEARING re Hybrid Hearing RE: Debtor's Amended Motion for Entry of an Order Authorizing the Debtors to Redact and File Under Seal Certain Confidential Information (Doc## 3644, 3635)

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P R O C E E D I N G S

THE COURT: All right, please be seated. Good afternoon, everyone. Mr. Koenig.

MR. KOENIG: Good afternoon, Your Honor. Deanna, could you please make my colleague Jeremy Young a cohost for sharing privileges?

CLERK: All right, Mr. Young is a cohost.

MR. KOENIG: Thank you so much. For the record, Chris Koenig, Kirkland & Ellis, for Celsius. Your Honor, it is such a pleasure to be here at the commencement of the confirmation hearing. We're here seeking confirmation of our modified Chapter 11 plan that's been overwhelmingly accepted by our accountholders.

This plan is the culmination of over a year of working collaboratively with all of our stakeholders from the Committee, formal ad hoc groups, regulators, and other governmental parties, as well as individual accountholders. Simply put, it's time to confirm the plan so that we can get out of bankruptcy and promptly make distributions to our accountholders and other creditors.

Before getting into what's next, I want to take a minute to walk through how we got here because context is so important. We filed a presentation at Docket No. 3630. Your Honor, do you have a copy of that presentation?

THE COURT: It's up on the screen.

MR. KOENIG: Okay. Wonderful. I'm going to start on Slide 4. So these cases were filed in July of 2022. Today, on the eve of confirmation that has such overwhelming support, it's easy to forget just how challenging the early stages of the case was. We filed for Chapter 11 in the midst of an industry-wide crypto winter that depressed prices across the board. The pause had happened just a month prior to filing.

State and federal regulators and other governmental agencies were actively investigating Celsius' prepetition business model for, among other things, alleged unregistered offerings of securities, money transmitter license issues, and securities fraud. That's not the way that anybody draws up the playbook for a Chapter 11 case.

So the early days of these cases continued to be difficult and uncertain. U.S. Trustee filed a motion to appoint an examiner. Regulators routinely appeared at hearings and told Your Honor about their concerns with our business model. Accountholders filed motions trying to regain access to the cryptocurrency that they deposited on Celsius platform. So what did Celsius do in light of all of these challenges?

At the direction of our independent and newly appointed special committee of the board of directors, we decided that the only path forward was full engagement and

full transparency. We did not object to the appointment of the examiner. Rather, we consented to her appointment and we fully cooperated with her investigation. We provided over 230,000 documents and she conducted 34 total interviews with 26 current or former employees.

Around the same time, the special committee told Mr. Mashinsky that he could either resign or be fired and he resigned. We engaged with regulators and other governmental agencies about their concerns regarding our business model. We reached historic, consensual resolutions with each of those regulators. None of the regulators are objecting to the plan today, and that's because of those agreements.

I think that's truly remarkable, given where these cases started. It seemed in the early hearings of the case, there was a revolving door of regulators who wanted to make sure Your Honor understood their frustrations about our lack of engagement. We fixed that. We were so pleased to be able to work with them to be able to fully resolve their issues on the plan.

At Your Honor's suggestion early in the case, we established email and phone lines where Celsius creditors can easily write in and ask questions. We responded to well over 1,000 emails to creditors during these cases. At some point, we just stopped counting. Perhaps most importantly, we decided to fully engage with the Committee, individual

creditors, and groups of creditors, to find consensus wherever possible, even if it meant making very large concessions in order to reach an agreement and drive the cases forward.

The Committee is the natural statutory portal to the Debtors. Their goal is to be a fiduciary for unsecured creditors and to provide a check on the Debtor in Possession. In most cases, the Committee is the Debtor's principal adversary. At the beginning of these cases, it certainly went that way. The Committee objected to many of our initial motions, insisted on wide-ranging consent rights, and the Committee also objected to our first exclusivity motion.

What the early days of the case taught us was that the only way to get out of bankruptcy was by truly building consensus and working with all stakeholders and not fighting over every last little thing. These cases are very expensive and we certainly could have fought over every last little thing and asked Your Honor to make rulings on every legal issue, but that would've been costly, would've led to delay, and also uncertainty in developing our transaction.

So building consensus meant that the Debtors had to really embrace the Committee and the accountholders that they represent and work together, and that meant making significant concessions to the Committee. We agreed to a

very short first extension of exclusivity with the Committee, even though we thought that the facts and circumstances of these cases certainly warranted a much longer one.

We agreed to wide-ranging consent rights for the Committee on cash management, security stipulation, bidding procedures, and other key orders. We truly invited the Committee in and gave them co-equal consent rights over key decisions in the case, from the decision to announce a stalking horse to picking a winner of the auction and giving them broad consent rights over all of the documents underlying the plan.

Perhaps most importantly, we agreed to turn over claims and causes of action to a litigation administrator that would pursue that litigation post-emergence on behalf of creditors. In many Chapter 11 cases, the Debtor and the Committee fight over exactly that issue, who is going to bring claims and causes of action of the estate, and Your Honor may have -- you know, in other cases, may have had to rule on the STN standard and whether it was the Debtors or the Committee that would bring those cases.

That did not happen here. Earlier this year, we entered into a stipulation with the Committee to put those claims against former insiders aside and allow the Committee's designee, a litigation administrator, to pursue

those claims for the benefit of accountholders. Simply put, we could have fought about everything and instead, we made the intentional and conscious decision to truly work with the Committee and try to get out of bankruptcy.

These Committee members in particular have dedicated an inordinate amount of their own personal time and efforts to this case to try to get the best effort -- the best outcome for creditors. I know that there are folks on social media who think it's very easy to second guess the Committee members, but their dedication of their own time, all of which is totally unpaid, and their fervent and honest desire to get to the right answer for accountholders is without question.

So I want to thank Mr. Colodny. I want to thank his clients for being able to work so constructively with us to get to this point. We simply wouldn't be here without them and without being able to work so constructively with them. Even though we often disagreed on key issues, we were able to work together to get to resolutions that allowed us to move these cases forward.

So, getting back to the timeline on the slide. So the way that I think about these cases is really in two stages. In the first stage, we needed to get the business operating safely in bankruptcy, start cooperating with all the different investigations, and get our new management

team in place with Mr. Ferraro as our new interim CEO. And we had some key legal issues that we had to resolve before we could work towards actually developing a transaction to get out of bankruptcy.

We had to have the Earn trial in trial in December to resolve the dispute over who owned the cryptocurrency in the Earn accounts, the Debtors or the accountholders. Given how many active pro se accountholders were arguing that the crypto belonged to them, there was no alternative. We had to have a judicial resolution. We could not have done it consensually. And we litigated with Custody and Withhold about their ownership rights as well.

Flipping to the next slide on the developments in this calendar year, January and December were probably the key turning point in the cases. We litigated Earn, Custody, and Withhold. We obtained the Court's ruling on the Earn dispute and we got the final examiner's report. All of these items shed light on key issues and frankly set the framework for the rest of the cases.

So that moved the cases into phase two and allowed us to move forward and focus on developing a transaction that would maximize the value of Celsius' business so that we can get out of bankruptcy. And during stage two, we kept resolving issues and building consensus wherever possible.

In the early portion of 2023 we reached

settlements with both the Custody and Withhold ad hoc groups to resolve key questions about the applicability of preferences and defenses for those accountholders. The preference portion of that Custody and Withhold trial would have been very interesting academically, but it would have been expensive, risky, and would have delayed the development of any transaction.

And so we've worked to pay out cryptocurrency to those accountholders that participated in the settlements. As Mr. Ferraro has regularly reported in his updates to the Court, we've now distributed almost $80 million in crypto to folks that have participated in those settlements. Critically, we reached a deal with Series B investors. This was perhaps the most complex and challenging dispute of the case.

Series B were seeking priority over all accountholders. They said that they had the right to the value of CNL and subsidiaries including mining and GK8. After the Court ruled that the customers did not have contractual claims against every legal entity, the Debtors and the Committee advanced numerous alternative theories from constructive fraudulent transfer to intercompany claims, substantive consolidation, and even a class claim on behalf of all accountholders.

Simply put, these cases would not -- we would not

we standing here today if we not -- had resolved that litigation. We would still be fighting with the Series B holders. Because of that settlement, we're able to take the value of GK8 mining and CNL, and in our view, rightly distribute the value of those legal entities to accountholders and other creditors under the plan instead of the Series B. Can we turn to Slide 11.

So these settlements cleared the way for us to develop and pursue a value maximizing transaction. The sales and marketing process was long and involved, but it was wildly successful. We started in March and we named NovaWulf as a stalking horse bidder. That transaction wasn't perfect, but it was a good starting point and it generated real competitive tension among other bidders.

We got numerous additional bids. We named two additional qualified bidders and we had a month long auction. The auction lasted longer than any of us would have liked, but it was wildly successful, as I said. We generated hundreds of millions of dollars of additional value for the transaction through the competitive tension of the auction process and through lower fees and extra contributions by Fahrenheit to the transaction.

And the particularly unique part of Celsius' business is that we have not only liquid cryptocurrency but real illiquid assets, too, most notably the mining business.

Celsius' mining business is already one of the largest in the country and we also have other illiquid assets too. We have causes of action relating to historic relationships and investments in a variety of other cryptocurrency businesses.

So maximizing value means not only distributing the liquid cryptocurrency that we have, but ensuring that accountholders can realize the full value of the illiquid assets as well, the mining business in particular. Selling the mining grades for the scrap that they are outside of the mining company would be particularly value destructive.

So what we were focused on in phase two and stage two of the cases was we wanted to find an excellent partner with a proven track record in crypto and finance generally. We found that partner in Fahrenheit who has demonstrated experience in key areas of managing cryptocurrency, Bitcoin mining, staking, and risk management generally. More specifically U.S. Bitcoin is already one of the largest and most successful Bitcoin mining operators in the country. They will run Newco's mining operations.

Proof Group will lead Newco's staking efforts and contribute intellectual property with respect to staking and assist Newco in developing its own staking business. And Fahrenheit is going to work to list the equity of Newco on NASDAQ to provide creditors with the maximum liquidity possible for the stock.

So we're very excited about Fahrenheit and what they have to offer. We believe that they will maximize the value of Newco for the benefit of the accountholders. And Fahrenheit believes in the business. They have agreed to invest up to $50 million of their own money in the business, right alongside accountholders. They are putting their money where their mouth is.

So after we announced the Fahrenheit transaction in late May, we worked to build additional consensus. In mid-July, we met with the Earn and Borrow ad hoc groups for three days in mediation before Judge Wiles. We reached an agreement on the terms of amendments to the plan that would gain the approval of those ad hoc groups and resolve the intercreditor disputes between Earn and Borrow.

Once that was completed, that meant that we had agreements with each ad hoc group for each of the Debtors' programs: Earn, Custody, Borrow, and Withhold. And before turning to the objections, I just really briefly want to talk about the orderly winddown. Experience in these cases, has taught us that it's important to have a backup plan. We believe that the Newco plan is executable and we maximize value, but we don't know exactly what the future holds.

We hope to be able to get out of bankruptcy by the end of this year, but we thought it prudent to set up a backup plan so that if we have to pivot for any reason, we

are ready to do so.

So, with that very long winded opening, that brings us to today. I'm not going to go through all of these slides. I don't want to go through all these slides, but can we do Slide 15?

So these are folks that filed formal and informal objections. Looked at the list of the parties that are going to speak this afternoon and what's notable is how many are speaking in support of the plan, and in looking at some of the names, a couple of months ago, you might have thought that they would have been on the other side of the ledger.

So we're pleased to have driven so much consensus. But turning to the objectors, as we set forth in our brief, we think we've resolved nearly all of the objections that have been filed. We made adjustments and clarifications to the release and exculpation provisions to incorporate all the comments that we received from the U.S. Trustee.

We are now resolved with the SEC and the state regulators and we also resolved many of the reservations of rights and other limited objections that were filed through agreed language in the modified plan or in the confirmation order. So only a few objections remain. This is just an opening, but I'll just briefly walk through a couple of the key ones now.

First, there were a number of borrowers that filed

letters -- retail borrowers who objected to the plan on the basis that they believe their plan treatment is inappropriate. They are arguing that they own the cryptocurrency that was deposited to support their loan. But the Borrow terms of use are very clear on this issue, just as the Earn terms of use were. Celsius holds legal title to those cryptocurrency assets and we can use, dispose, or hypothecate those assets as Celsius sees fit. The borrowers don't own the collateral, we do.

They are unsecured creditors. What the borrowers do have is a right of setoff because they have claims against Celsius for the return of the cryptocurrency they deposited and Celsius has a claim against them for the repayment of the loan principal. And that's exactly how the Chapter 11 plan is structured. Borrowers have a right of setoff.

And notably, this treatment was accepted by borrowers in over 96 percent in dollar amount and 98 percent in number. And they also have some additional rights that they achieve through the mediated settlement that we reached with the Borrower Ad Hoc Group. Most importantly, they have the option to repay the principal balance of their loan. They will receive a like amount of cryptocurrency back in the amount of the principal balance.

Now, why that's important, Your Honor, is tax

reasons, frankly. If they have a low basis in the cryptocurrency they deposited, receiving a like amount back is a much better tax outcome for them than if they were to have those claims set off. It might be otherwise economically the same, but obviously, if we can structure a transaction to save taxes for our accountholders, we're happy to do so.

We also agreed to work constructively with borrowers who want to take advantage of this option but might need financing. So to the extent they identify a third party lender who would come in and give them financing to make this principal repayment, we will cooperate to the extent we can and with the lender to make sure that this transaction can go through.

So this is all consistent with the borrower's legal rights under the borrower terms of use, which means that the best interest test is satisfied with respect to them. For that reason, these objections by these retail borrowers should be overruled.

Pharos objected on two discrete issues, the absolute priority rule and the best interest test. On the absolute priority rule, they complained the Series B holders who are equity holders are receiving a distribution under the plan when creditors are not being paid in full. To be clear, the Series B holders -- this is only those that did

not affirmatively participate in settlement that Your Honor ordered earlier this year. This is just for them to receive their pro rata share of the million dollars that you approved.

Pharos says that this violates absolute priority, but this Court approved settlement resolved an issue of priority, too. The Series B holders argued that they were ahead of creditors and the whole reason we entered into the settlement was to resolve this very important issue.

And notably, I think Your Honor has dealt with this issue at least adjacently in the Dewey and LeBoeuf case. In that case, there was a settlement that was entered into among the partners and some objecting party said that it was a sub rosa plan and it violated absolute priority.

And there, you found that you can -- that a absolute priority can be diverged from if there is a good reason to do so. And here we think that there's a very good reason to do so. It resolved another priority dispute. And had we not done so, the Series B may have been entitled to up to $600 million of assets.

Second, they raised the best interest test. They argue that the liquidation analysis to be presented doesn't demonstrate that holders of general unsecured claims like them are receiving under the plan as much as they would in a Chapter 7 liquidation. But as part of making an argument,

they argue that Newco is actually completely valueless, even though it's being seeded with $450 million of liquid currency, Newco will run and operate a mining business where the Debtors submitted a valuation that has a midpoint value of $565 million and other liquid assets that a separate valuation report valued in the hundreds of millions of dollars.

Their objection says that we've submitted no evidence, but actually, there's over $1.2 billion of assets that Newco is going to be seeded with and we've submitted two separate expert reports to prove that point and we will certainly submit them for cross examination this week to prove the point in Court.

Moving on to the next point. A few individuals objected to the emergence incentive plan that is embedded in our chapter 11 plan. I want to acknowledge, I know that executive compensation is understandably a hot button issue for accountholders who were defrauded. They just want to get out of bankruptcy. We do, too. But this management team was not the ones that defrauded the accountholders. That management team is gone. Those former insiders are gone.

We're under new management who has been working around the clock to make sure that our systems are ready to make distributions of over $2 billion of cryptocurrency

that's required negotiating agreements with Coinbase and PayPal, coordinating with them to make sure that all the distributions can go off without a hitch and preparing for Celsius' own distributions of custody under the plan. Celsius and the distribution agents need to make over 400,000 distributions of liquid cryptocurrency on the effective date.

Accountholders will want that to be done in a very short period of time, and it's only thanks to the continued efforts of the company's management team that this will even be possible. So as an initial matter, the plan included this incentive plan as part of its terms. The plan was voted on. The classes of accountholders who objected to this term voted to accept the plan. It is binding on the rest of the class so long as it meets best interests, which it does.

This is a payment of up to $2.6 million. The difference between a Chapter 7 liquidation and the plan is well over 100 times that amount and the payment isn't going to be made by the Debtors, either. It's going to be made by the post effective date Debtors and only after the plan administrator verifies that the metrics have been met. That was a change that we made at the suggestion of the U.S. Trustee to help resolve their issues with the emergence incentive plan.

So we think the requirements of the Bankruptcy Code for payment of executive bonuses don't even apply for these reasons. But even if they apply, the evidence will demonstrate that EIP easily meets those requirements. The evidence will show the management team is paid well under market and in fact will continue to be paid under market even after the EIP is paid.

And the management team's contributions are far in excess of their typical job duties. Frankly, we could not be here without the efforts of these executives and we need to make sure that we properly incentivize them so we can maximize value and promptly return cryptocurrency to creditors.

The only other significant objections on this list are largely on CEL token. I believe that Mr. Colodny will be covering that. It's the Committee's expert on the valuation of CEL token that is really at the heart of this issue. There are a few other objections that were covered in the Committee's brief but not the Debtors' brief so I'll defer to Mr. Colodny there as well. This is just an opening statement. We filed a 150-page brief which not sure if Your Honor has fully read yet.

THE COURT: I have now.

MR. KOENIG: So --

THE COURT: We had a hearing last week. I hadn't

been all the way through it, but I have now.

MR. KOENIG: So the brief walkthrough is required in some more detail. I'm not going to belabor the point. I know we have a lot of folks to speak. So unless Your Honor has any questions for me, I'll conclude my remarks by saying we're excited to present our case to confirm the plan. We're going to work to get out of bankruptcy and make distributions to our accountholders. I'll cede the lectern to my colleague, Elizabeth Jones, who's going to be presenting on the voting results and going to be outlining the witnesses that you're going to hear from this week.

THE COURT: Thank you.

MR. KOENIG: Thank you.

THE COURT: Ms. Jones?

MS. JONES: Good afternoon, Your Honor. Elizabeth Jones of Kirkland & Ellis on behalf of the Debtors. If we could start now on Slide 26, which walks through the voting results. The next two slides, Your Honor, demonstrate the voting results that we filed in Mr. Brian Karpuk's declaration at Docket No. 3560 then was subsequently amended at Docket No. 3574.

Your Honor, as demonstrated in the voting results, the plan has been overwhelmingly accepted by accountholders in both number and amount. Classes 2, 4, 5, 6A, 7, 10, and 14 out of our 17 classes voted to accept and while Classes 8

and 9 may have voted to reject the plan and we have a few other deemed to reject, as my colleague, Mr. Koenig noted, we can and do think that the plan should be confirmed as we set forth in our papers.

Your Honor, if I may --

THE COURT: There's no one junior to those rejecting classes that are receiving anything under the plan?

MS. JONES: Not on behalf of their status as an interest holder, but on behalf of the settlement in Series B.

Your Honor, if I may also provide just a few other statistics to demonstrate how successful this solicitation process was. The Debtors distributed approximately 380,000 ballots and received approximately 80,000 in return, giving us a little bit more than a 20 percent return rate. In comparison to two of the recently filed crypto cases, in Voyager, they had about a 5 to 6 percent return rate and in BlockFi, they had approximately a 10 percent return rate. Both of those had ballots returned anywhere between 35 and 65 thousand ballots.

Your Honor, what's even more impressive here is that out of those 80,000 ballots that were returned, we had $3 billion worth of those claims out of approximately $5 billion in claims; $2.55 billion of that came from holders

in our Earn class.

So Your Honor, what that demonstrates here is that there has been a lot of participation. We know the ballot was complicated. It was not an easy check box and yet we were very, very fortunate that we had 80,000 individuals willing to walk through that and demonstrate their support for the plan.

In addition, Your Honor, and a few other important statistics, we had roughly only 515 parties opt out of the third-party releases and we have only a little bit over 1,700 individuals opt out of the class claim settlement. We had 30,000 proofs of claim filed, so to have only 1,700 of them opt out and elect to continue pursuing that is a huge success from our view.

So Your Honor, we would just like to conclude our opening by introducing the witnesses that we will hear from over the next few days in addition to Mr. Karpuk from Stretto. So Your Honor, we have also filed declarations on behalf of six other witnesses.

First, we'll have Mr. Christopher Ferraro, whose declaration was filed at Docket No. 3581. He is the Debtors' interim chief executive officer, the Debtors' chief financial officer, and the Debtors' chief restructuring officer. He will be providing evidence in support of certain of the 1129 factors as well as a number of other

items that we address through our brief.

Your Honor, we will also hear from Mr. Robert Compagna, who is a managing director at Alvarez & Marsal. His declaration was filed today -- or was filed last week at Docket No. 3582 and a supplemental declaration was filed shortly before this hearing at Docket No. 3653. He will also provide evidence in support of certain of the 1129 factors as well as the best interest test.

Next, Your Honor, we have Mr. Ryan Kielty, who's a partner of Centerview Partners LLC. His declaration was filed at Docket No. 3592. He will provide evidence in support of the mining valuation. You could turn to slide -- perfect, than, you, 29.

Next, Your Honor, we have Mr. Steven Kokinos, whose declaration was filed at Docket No. 3591. He is the proposed chief executive officer of Newco and a member of the Fahrenheit Group who was our plan -- and is our plan sponsor. He will provide evidence in support of the proposed Fahrenheit go forward business plan.

Next, Your Honor, we have Ms. Allison Hoeinghaus who has filed a declaration at Docket No. 3586. She is also a managing director at Alvarez & Marsal and she will provide evidence in support of the Debtors' emerge incentive plan.

Finally, Your Honor, we have Mr. Joel Cohen who filed a declaration at Docket No. 3588. He is a managing

director at Stout Risius Ross LLC and he will provide evidence in support of the Debtors' valuation of certain liquid and illiquid assets.

So Your Honor, as my colleague, Mr. Koenig noted, we filed a large brief in support of our argument and we will hear from the witnesses in the next few days on the factual basis as to why we think the plan can and should be confirmed.

We're here today as a result of a lot of hard work and consensus building in the last 14, 15 months and we stand here ready today both to prove our case in chief, confirm the Chapter 11 plan, and hopefully conclude these chapter 11 cases.

THE COURT: Thank you very much. Mr. Colodny.

MR. COLODNY: Good afternoon, Your Honor. Aaron Colodny from White & Case on behalf of the Official Committee of Unsecured Creditors. Could my colleague Mr. Dowdy be made a cohost to share our presentation?

CLERK: Yes, just give me one moment, please.

MR. COLODNY: Thank you. While you're doing that, Your Honor, I know I always am batting second to Mr. Koenig here. We come at this from a slightly different perspective, and so while I may repeat some of the things he said, I made an effort to keep my opening remarks shorter for Your Honor.

THE COURT: They didn't use their full allotted time.

MR. COLODNY: To ensure I don't go over, I think I'll start while they do that.

THE COURT: That's fine, go ahead.

CLERK: It's -- he's a cohost. He's been a cohost for a little bit.

MR. COLODNY: Yeah, I see it. It's just I think he's working on trying to get it to a presentation slide instead of the PowerPoint people.

THE COURT: No problem.

MR. COLODNY: I'll go a cappella, I guess.

THE COURT: Give it another minute. I think if you click from the beginning in the upper ribbon, you'll get there. Go ahead.

MR. COLODNY: All right. On June 12th, 2022, Celsius paused withdrawals to stop a run on the bank. Before the pause, as will be shown in the next slide, Celsius and executives repeatedly assured accountholders and the public that everything was fine and all their funds were safe. On the date of the pause, everyone knew that they were not. For a month, Celsius was silent and rumors flowed. Then on July 13th, 2022, we filed Chapter 11 cases before this Court with no plan for how these cases would proceed.

The first day declaration painted a picture of a company that was crippled by the crypto winter and had invested with the wrong people. At that time, Mr. Mashinsky testified that the company had a $1.2 billion deficit. The Committee was appointed on July 27th and was tasked with representing the interests of the Debtors' largest constituency, the company's unsecured creditors including nearly 600,000 retail holders who held the majority of the claims against the Debtors.

Those accountholders were dispersed all over the world and were without access to their funds. Shortly thereafter, it became clear that what was testified to in the first day declaration was not the entire story.

Rather, information published by the Debtors and investigations conducted by the Committee and independent examiner uncovered a company rife with issues including a hole in the balance sheet that began in March '21, the company's repeated misrepresentations of business practices, an orchestrated corporate cover up of those misrepresentations, and the company's manipulation of the CEL token.

And while Mr. Mashinsky and Mr. Leon were telling accountholders that all funds are safe and damn the torpedoes, full speed ahead, they were secretly withdrawing tens of millions of dollars from the platform. That is

where we started, with a heavy cloud over these estates, accountholders who had been deceived into entrusting their hard earned assets with Celsius and a platform that was shut down so that the few who were quick to withdraw would not further dissipate the remaining assets to the detriment of those who did not ask.

Upon learning all of that information, we acted quickly and firmly to ensure that the bad actors were removed from positions of power that they occupied with control over accountholder assets. Today, we are before Your Honor with a plan that if confirmed and consummated will distribute nearly $2 billion of Bitcoin and Ethereum and stock in a new company to the Debtors' creditors.

The new equity will maximize the value of the Debtors' other assets and provide creditors with the ability to monetize those assets when they would like. Importantly, the plan also preserves claims against Mr. Mashinsky, Mr. Leon, and others related to that wrongdoing to be prosecuted after the bankruptcy case is concluded.

The plan includes explicit carveouts to the typical Chapter 11 releases or excluded parties which include all former employees, equity holders, contract counter parties, promoters, advertisers of Celsius that are not specifically identified as released parties.

Now to touch on the plan process a bit and move to

where we're going with this trial. Since the beginning of these cases, our Committee has had one goal, to return as much value to creditors as soon as we could responsibly do so. The process has taken longer than we would like, but we stand on the precipice of confirming the first reorganization of a major cryptocurrency company.

And as Mr. Koenig explained, the path to get here was not easy or rarely a straight line. There were significant and novel legal issues that needed to be resolved to fairly distribute the Debtors' assets. We methodically navigated those issues before this Court, each time putting accountholders as a whole first, building consensus, and creating a foundation for the plan that's before Your Honor today.

We methodically navigated -- while those issues were being determined, the Committee did not stand in place. Rather, we pushed the Debtors and worked cooperatively with them to reorganize and rehabilitate their mining business. That was not an easy task. The mining business was in disarray upon the filing and after the filing suffered significant setbacks due to the financial issues of many of its major counterparts.

As you will hear from Mr. Kielty of Centerview Partners, the Debtors and the Committee ran a competitive sales and auction process that took advantage of a rebound

in the crypto market and renewed interest in sponsoring the plan of reorganization for the Debtors. Through the auction, we were able to leverage that competitive tension to bring multiple bidders to the table and drive the best deal possible for creditors including the distribution of a significant amount more liquid cryptocurrency than was in the stocking horse bid.

The Debtors for their part understood that creditors would own substantially all of any reorganized business. And as a part of that auction process, they worked cooperatively with our clients to identify the highest and best -- highest bid and best management team to run the new company. Given the history of Celsius, it was of paramount importance to our clients that Newco be placed in trusted hands and our clients spent many days with each bidder to make the right choice for who would sponsor that plan.

At the end of the auction, the Committee members, as they've done throughout this case, acted unanimously to select the Fahrenheit Group as the winning bidder. Fahrenheit is a group of seasoned professionals with experience in the cryptocurrency industry. They also have experience building technology companies and managing risk at large financial institutions. And as you will hear from Mr. Kokinos, the proposed CEO of Newco, each of the members

of Fahrenheit will be making a significant financial investment in a new company which has yet to be named.

Fahrenheit will stand alongside accountholders with aligned incentives to increase the equity value of Newco for the benefit of everyone. Now, this new company will be a first of its kind business. It will have significant operations concerning two major cryptocurrencies, a Bitcoin mining company, and it will also stake the company's own ethereum. I want to touch on three points that guided the Committee's approach to constructing this new company. First, compliance with applicable regulations.

We worked to color inside the lines and consult with the regulators to create a compliant entity out of the gates. We were presented with many unique ideas for how to reorganize and restructure the claims against the Debtors. In many instances, we opted to take the conservative approach to ensure that we could exit bankruptcy. That was of paramount importance to my clients.

Bankruptcy provides the Debtors with a fresh start upon emergence. And here, that fresh start is a competitive advantage for the new company that we were unwilling to compromise. We also understood that to emerge on our timeline, we had to work with regulators to ensure that they were comfortable that accountholders were protected on the

other side of these Chapter 11 cases. As Mr. Koenig mentioned, we've been in constructive dialogue with the regulators which were led by the Debtors throughout this process and the lack of any objection from regulators is a reflection and validation of that approach. It's also something that differentiates these cases from any other Chapter 11 case concerning a cryptocurrency company.

Second, we wanted to provide creditors with liquidity. We understand that creditors did not sign up to own equity and many creditors need access to their investments. However, many of the investments that Celsius' prepetition management made are illiquid and selling them now would have resulted in a steep discount. Putting those assets in a liquidating trust would also not maximize their value, as those instruments typically trade for pennies on the dollar.

The plan currently contemplates that those illiquid assets will be transferred to Newco whose equity is anticipated to be listed on NASDAQ. That unique opportunity is only presented through Section 1145 exemption under the Bankruptcy Code. And as we flagged in our brief, there are still regulatory approvals that need to be received for that equity to be listed; however, those regulatory approvals will not hold up confirmation.

THE COURT: Is there an estimate of the timeline

to get the securities registered?

MR. COLODNY: My understanding, Your Honor, is we are waiting on the SEC audit function to approve a preclearance letter. Once that preclearance letter is approved, we'll then submit the Form 10 and there's a 60 day waiting period, then, while the SEC reviews that Form 10. But I want to flag, Your Honor, that it is customary for confirmation orders to be entered with a condition precedent to the plan being the receipt of regulatory approvals.

And if those necessary regulatory approvals are not obtained, the plan provides for the mechanism to toggle to the plan B. We believe the plan B will result in lower recoveries, but it will allow the Debtors to proceed with distributing assets to creditors, which is --

THE COURT: Is there an estimate on the time for regulatory approval?

MR. COLODNY: Of the --

THE COURT: When?

MR. COLODNY: I think we're confident it will occur by the end of the year, but I don't know that we've received a set estimate from the SEC at this time.

THE COURT: Okay.

MR. COLODNY: Third, we want to ensure that Newco will be transparent and overseen by a competent and accountable board of directors. Before I proceed, Your

Honor, I don't want to make any promises that we are going to receive regulatory approval or emerge by the end of the year. I think the answer, to be candid, it's unclear and it's dependent on whether the SEC will grant our preclearance letter.

THE COURT: I wasn't looking for promises.

MR. COLODNY: So our third pillar, when we were thinking about this new company, is we wanted to ensure that Newco was transparent and overseen by a competent and accountable board of directors. Newco will be a public reporting entity that will file 10Ks, 10Qs, and 8Ks of major events.

It will be overseen by a qualified board of directors, a majority of which were selected by the Committee through an intensive interview process and Your Honor will hear from our committee member, Major Mark Robinson, regarding the board selection process and why our clients believe that they have selected the best set of experienced directors to oversee this new company.

We also heard from our constituency who wanted to ensure that creditors had oversight of that board, and we worked with the Earn group who identified three significant prepetition creditors to act as board overseers. Now, five prepetition creditors with a significant stake in Newco will have a seat at the table and that board will ensure that

Newco is operated for the benefit of its shareholders who will initially be creditors.

There were lots of debates throughout the auction in these cases about how best to reorganize the Debtors' assets, how to reorganize a cryptocurrency company is not something you can look up in a cookbook, and we went through an intensive process which has been detailed in the record and will be detailed by Mr. Kielty to select the option that the Committee believes and the Debtors believe is the best path forward.

We heard loud and clear throughout these cases that creditors were not interested in receiving fiat currency through a liquidation under Chapter 7, and as will be demonstrated by the Debtors' witnesses, the recoveries provided to creditors through the plan far exceed the recoveries that would be provided if the Chapter 7 Trustee was appointed and liquidated the Debtors' cryptocurrency, mining rigs, and illiquid assets. And quite frankly, it's not close.

The culmination of this entire process is an overwhelming vote in favor of the plan. With over 87,000 accountholders voting to accept in the amount of $2.8 billion which far surpasses anyone's wildest expectations, and given where these cases started and the long strange trip it's taken to get here, I think we all can say these

results are a vindication of all the hard work.

Now, Mr. Koenig has addressed many of the objections and I want to spend the rest of my time speaking about the proposed treatment of CEL token under the plan. One of the questions before the Court is, what is the CEL token. The evidence will show that CEL token is a fungible digital representation of ownership of a unit that was issued by the Debtors. Mr. Ferraro will explain how holders of CEL token could use those tokens to pay the company interest on retail loans at a discounted rate.

Accountholders could elect to earn and sell and receive a higher rewards rate on their deposits than if they if they elected to receive in the cryptocurrency the deposited. And CEL token functioned as a type of airline loyalty miles, where people that held a certain amount of CEL token could get access to lower rates or products that the company was offering.

Mr. Ferraro will also testify that after the pause, none of those uses continued to exist. To be clear, Celsius has no obligation at any time to redeem CEL tokens or make any payment of cash on account of CEL token. Its only obligation is to return the CEL token to accountholders when requested, if they have accounts in the Earn program.

Mr. Ferraro will also testify that Celsius advertised in investor presentations and directly to the

public that the value of the CEL token represented the success of Celsius. Mr. Mashinsky regularly touted the value of the CEL token on his public videos and how the efforts of the Celsius team to grow the business would cause the CEL token to increase and used the circular flywheel model to demonstrate this.

Put simply, CEL token was an equity or equity-like security whose value rose and fell based on the efforts of Celsius and Celsius' ability to go -- continue as a going concern. Now, what CEL token is, determines how it should be treated under the Bankruptcy Code. If CEL token is an equity or equity-like security, it would come after all unsecured claims. Moreover, if CEL token is determined to be a security, as we have argued in our pleadings, claims arising on account of the purchase or sale of the CEL token would be subordinated and would only recover after all claims are paid in full.

However, because the treatment of digital assets under the Bankruptcy Code is a new issue, it is the Committee's position that denying any recovery to CEL token holders who were lied to the same as all other accountholders, would be inequitable. I want to pause and point out that all eligible accountholders could have elected to earn in CEL token, and those that did so knowingly took a greater risk tied to the success of Celsius

than those who elected to earn in kind in the cryptocurrency that they transferred to Celsius.

For example, those that elected to receive interest in Bitcoin elected to receive a token that had a value independent of Celsius. Those that deposited Bitcoin and elected to receive in CEL, elected for this riskier option which had the potential for a higher return both in terms of the growth of the token and the amount that they received as interest.

But Celsius has now failed, and because there are not enough assets to satisfy all claims, providing value to one set of creditors decreases the amount recoveries for all other creditors. The Committee attempted to navigate this delicate balance by offering a 25 cent settlement as value of CEL token under the plan. That settlement was proposed through the plan and after a lot of development, the plan was clear that a vote to accept the plan was a vote to accept that settlement and the settlement was accepted by an overwhelming amount.

Those voting results are a testament to the reasonableness of the settlement. Now at the last hearing, Your Honor noted that the treatment for dissenting CEL token holders cannot be imposed on those dissenting creditors unless the Debtors demonstrate that the treatment meets the best interests of creditors test.

In other words, the Debtors must show by a preponderance of the evidence that the CEL token holders receive more under this plan than they would receive in a Chapter 7 liquidation. Here, that test can mean that in three ways. As we discussed before, first, the Court could find that the CEL token was the equivalent of equity or should be recharacterized as equity.

THE COURT: Let me just stop you there for a minute. In the SEC's complaint against Mashinsky and Celsius, the complaint takes the position that the Earn accounts under the Howey Test were securities.

MR. COLODNY: Correct.

THE COURT: If the Earn accounts were securities and the CEL token was a security, wouldn't they both be subordinated and essentially be in the same class for distribution?

MR. COLODNY: I don't agree with that, Your Honor.

THE COURT: Okay, tell me why.

MR. COLODNY: Because the Earn accounts are the akin to a debt obligation. Celsius has a payment obligation under an Earn account to return the assets to accountholders. In every Chapter 11 case, there are unsecured notes. Unsecured notes is the first item listed in the definition of security under the Bankruptcy Code, and payment obligations on behalf of unsecured notes are never

subordinated. Damage claims arising from those unsecured notes may be, but the payment obligations are not.

When I think about the CEL token, it's a security inside of that security and because it's an equity interest with no payment obligation on behalf of the Debtors, it should be treated differently than the Earn accounts. I know it's a fine distinction, but I think it's one that's incredibly important and it is one that is -- happens in bankruptcy cases all the time. I've dealt with bankruptcy cases with $2.7 billion worth of payment obligations on unsecured notes and it's never mentioned that those payment obligations will be subordinated.

So I think where I was when I left off were the three reasons how it can meet the best interest test. The first, as I talked about, was if it was recharacterized. The second is 510(b) as you mentioned. In both cases, the plan could be confirmed if the Court makes either finding if it provided no value to CEL token holders. However, Your Honor doesn't need to reach those points.

As Mr. Compagna will testify, you only need to find by a preponderance of the evidence that the value of the CEL token on the petition date was less than 34 cents to determine that the best interest test is met. And here, that's clearly the case.

THE COURT: The 34 cents because of what?

MR. COLODNY: Thirty-four cents because if you look at 34 cents times the 47 percent recovery analysis and look at the 25 cent proposed recovery times the 65 percent -- 67 percent reorganization, the 67 percent reorganization on the 25 cent recovery is greater than 47 on the 34 percent. Sorry.

Now, if you consider the CEL token in terms of its value being tied to Celsius and consider that Celsius by its own admission was wildly insolvent as of the petition date and that the Celsius platform was shut down and there was no longer a use for the CEL token, the value on the CEL token has to be zero or something close to it. Mr. Galka, our expert, is going to tell you that determining the specific value of the CEL token at a point in time is not easy endeavor for a number of reasons.

First, it lacks any underlying cash flows or financial metrics that would support its value in a manner that's traditionally applied to valuation. The market price of CEL token could be an indicator of the value; however, as the evidence will show the market price, here was never an accurate indication of its value as it was significantly affected by Celsius' covert purchases of the token prior to the petition date.

Celsius advertised that it was purchasing the amount of CEL token it needed to pay customer rewards. That

was a business model. It's one of the critical elements of why CEL token should be a security. The evidence will show that what Celsius did not tell the public or even many of its employees was that it was purchasing far more than required to pay rewards to inflate the price and create the perception of success for its flailing enterprise.

Celsius has admitted that, and I'm quoting from the statement of facts that Celsius admitted was true as part of its non-prosecution agreement it entered with the DOJ. The rise in the value of the CEL token was not the product of market forces, but was instead attributable to the fact that Celsius executives including Mashinsky had orchestrated a scheme to manipulate the CEL token by taking steps to artificially support the price of CEL.

Now, Your Honor will hear testimony from Mr. Galka, our expert witness and Mr. Galka will corroborate that admission and he will --

THE COURT: Is that admission entitled a preclusive weight in this trial?

MR. COLODNY: I'm not sure, standing here today, Your Honor. But what Mr. Galka will demonstrate by the evidence is that applying every assumption Celsius' favor, it purchased CEL -- it's purchases of CEL token exceeded the amount of CEL token it paid the customer by over $100 million. And that fact led him to conclude that Celsius was

taking actions to affect the price of the token prepetition. And the market wasn't only affected by Celsius' purchase of the token. The market was lied to as Celsius persistently misrepresented its financial position and covered up those lies.

It was not the case that some people knew and some people didn't. Some people did. They watched the videos live and then the clips were deleted. Now, you only have to look at the first pages of our presentation where Celsius and executives were telling the market everything was fine, while under the curtain, they've admitted they were insolvent by a billion dollars.

Now, prior to starting Elementus, Mr. Galka traded complex derivatives for over nine years. Part of his role in those positions was to identify dislocated markets or in other words, markets where for the price of an asset did not reflect its intrinsic value. And Mr. Galka will testify that following the date that Celsius paused withdraws based on his review of market data and significant experience trading dislocated markets, it is his opinion that the market for CEL token was extremely dislocated and thereafter, the market price was not remotely accurate indication of its value.

Now, at the last hearing, you asked me the very direct question, what will Mr. Galka say the CEL token is

worth on the petition date.

THE COURT: Yes, and I gave my permission earlier today that a supplemental declaration can be -- I don't know whether the order got entered or not. I was not at the courthouse this morning, but I was asked that question. I gather there was a request to be able to file a supplemental declaration and I approved that.

MR. COLODNY: Correct, Your Honor. And the reason why we want to file that supplemental declaration is we understood that you want to give everybody the chance to see the testimony. So we didn't -- even though we didn't want it to come out on the (indiscernible). We wanted everyone to have the opportunity. And what Mr. Galka will testify is that if asked to put a price on the CEL token on petition date, he would not have quoted a price. I think that's unremarkable, and it's because he believes that the CEL token had no value and there were no economics supporting the value of the token on that petition date that he has seen.

Mr. Ferraro, the CEO of the company, will similarly testify that he believed the CEL token had little to no value on the petition date and there is no economically rational reason for the value to increase between the pause and the petition date. Now, people have taken issue with that conclusion, but it should come as no

surprise. In fact, well before the pause, Celsius disclosed that the CEL tokens may become unusable, illiquid, and/or worthless in the event that the Celsius platform ceases to operate.

Now, that's enclosed in the risk disclosures that as Your Honor found were accepted by 99 percent of all accountholders. Put simply, Your Honor, it's unremarkable that a token based off of the success of a company whose sole use related to the operation of the platform that company ran would have no value when that platform spectacularly failed.

In closing, these cases have been a difficult journey for all accountholders. The plan has been accepted by an overwhelming amount of those accountholders and as will be demonstrated throughout this week, it meets all the requirements for confirmation under the Bankruptcy Code and should be confirmed.

THE COURT: Thank you very much, Mr. Colodny.

MR. COLODNY: Thank you.

THE COURT: All right. Let me hear from the United States Trustee next.

MS. CORNELL: Good morning, Your Honor.

THE COURT: Good afternoon, but very nice to see you in the courtroom, Ms. Cornell.

MS. CORNELL: Shara Cornell for the record, the

Office of the United States Trustee. Your Honor, we appreciate the hard work of all the parties in these cases and their engagement with our office on various issues. We have an active creditor body which began on first days, continued through the 341 meeting with over 1,000 creditors in attendance, up to and through this confirmation hearing. But our role did not end at the 341 meeting, as is often the case. This case required more.

We actively managed this case which resulted in among other things, an examiner, an ombudsman, and several cost saving measures, and the benefit of the work product of the examiner has been discussed extensively previously. Also given that the Debtors' assets are cryptocurrency, cash management required unique disclosures and protocols to safeguard these assets which are ultimately to be distributed to creditors.

We worked with the professionals to ensure the safety of these resources for the Debtors' estate and like the Debtors and the Committee and many of the professionals in this case, we have been routinely contacted by creditors. There was activity by various individuals that resulted in referrals to certain agencies, matters that we take seriously as do our sister agencies and departments.

Like the Committee and the Debtors and their professionals, we've also been on the receiving end of toxic

language and threats --

THE COURT: So has the Court.

MS. CORNELL: -- of course -- from creditors and parties and interest. But through all of this, our goal has remained steadfast. We moved this case along. We're also following the letter and the spirit of the law. And we do stand here today. We're nearing the finish line.

With all that said, we have a few objections pending to confirmation which we were -- which were agreed at the disclosure statement hearing to be heard today at confirmation. And during the interim, we've engaged in many discussions with the various professionals and the UST is appreciative of those efforts to claw back in some respects, the exculpation and release provisions. And there really was a lot of negotiating and in some instances disagreement, but overall the Debtors and their professionals worked diligently to include many of our concerns.

We still hope that our remaining issues can be negotiated before the end of this confirmation proceedings. While these revisions were helpful, like the temporal limitation, the exculpation provision, both the exculpation and release provisions are still somewhat overbroad and need further revisions and clarifications on the record, which we expect the Debtors to do in the next few days.

First, with respect to exculpation, only estate

fiduciaries can and should be exculpated by the plan. While the United States Trustee believes that a proper exculpation tracks 1125(e) of the code providing for a limitation of liability in connection with certain good faith solicitation and plan participation efforts, Courts in this District, as Your Honor knows, routinely follow a Aegean Marine Petroleum Network, Inc., 599 B.R. 717. But here, the Debtors seek exculpation for former and current --

THE COURT: I'm not sure I agree with that statement completely. I think that judges on this Court, including myself, have granted broader exculpation than that decision. So there is not uniformity among the judges on our Court.

MS. CORNELL: No, I would not say there's uniformity, Your Honor. No. But it is often quoted and used in this context.

Transactional parties are also exculpated in this instance, but they're not limited to the specific transactions that they took part in. Indeed, the ad hoc Committees, the BRIC, Fahrenheit, the class claim representatives, Coinbase, PayPal, all performed specific and limited acts but are being provided broad protections for any and all work done in connection with these cases. The fact that a party is engaged in one action before a Bankruptcy Court does not entitle that party to have all of

its actions within a bankruptcy case protected.

For example, exculpation for events, occurrences, and agreements is vague and not necessarily limited under Aegean. Furthermore, we believe a temporal scope is necessary and one has now been added by the Debtors. But the scope is confusing when read with the other provisions because the other provisions refer to entities that are not in existence and could not have performed any of the appropriately exculpated actions during the identified scope. Entities that are not in existence or could not p perform the properly exculpated actions during the temporal scope should be removed to avoid any confusion.

Second, the released parties are still over broad as well. For example, the plan administrator is a released party. The Debtors have not yet provided a factual basis or a legal basis for his inclusion. What consideration the plan administrator has made to the case must be identified. Evidence of valuable consideration for each party is necessary.

Also, while the Debtors allege that various parties played an important role, for example, certain ad hoc committees, it is unclear as to what valuable consideration those parties gave yet, and the terms like other professionals as it relates to released parties is also somewhat unclear. Any party to be released should be

named in the plan and not just referred to, generally speaking, as other professionals.

Moreover, the Debtors are yet to explain how claimants that have rejected the plan will be bound by these release provisions. You're not a releasing party if you have rejected the plan, but you're also a releasing party if you fail to vote for the plan. This question requires additional information on the record by the Debtors.

Lastly, the confirmation order includes a waiver of Rule 3020. Congress intended to give parties 14 days for a reason and there is no basis to waive that in this case. We do not want to force people or parties into expedited motion practice, which is a waste of judicial resources and estate money. The most recent agenda I believe was the 29 responses for confirmation, which is an unusually large amount of responses, and we do not want to cut off the rights of these parties.

There are a lot of issues and I think 14 days, which is the rule not the exception, should be applied in these cases. Also Your Honor, as an update, after the hearing on Friday regarding the United States Trustee's concerns about Committee membership, as the docket reflects, we filed a supplemental notice of appointment at Docket No. 3631.

Additionally, Your Honor, United States Trustee

and the Committee have been in contact over the weekend and have reached a resolution in principle regarding certain of the exculpation language regarding to Mr. Noyes and any potential actions associated therewith. The language is currently being finalized and we hope to present that to the Court later this week via the Debtor.

This concludes our opening remarks and we're available to answer any questions from the Court or otherwise.

THE COURT: Thank you, Mr. Solomon.

MS. CORNELL: Thank you.

THE COURT: All right. The Ad Hoc Earn Account Group.

MS. KUHNS: Good afternoon, Your Honor. Joyce Kuhns of Offit Kurman for the Ad Hoc Group of Earn Accountholders. This has undisputedly been a long and arduous road for the Earn customers, starting with the pause and subsequent revelations of a systemic fraud perpetrated on them, and then navigating the intersection of two seemingly disconnected worlds, the decentralized world of cryptocurrency which they were used to, and the centralized bankruptcy forum which they were not.

There were many misunderstandings at that time. New legal theories had to be tested, starting with who owned the customer deposited cryptocurrency. It is no surprise

that the January 4 decision determining that it was property of the estate sent shockwaves through the Earn community. The concept of dollarization was also concerning, dollarization of crypto claims as of the petition date, and at a time when Bitcoin, for example, was steadily rising in value. It led to the inevitable Earn question. Who is benefiting from the appreciation in the crypto and why isn't it us?

These were among the concerns that led to the formation of the Ad Hoc Earn Group by significant Earn claimants who realized the need to come together and speak with a unified voice to advance their common goals. On behalf of the Ad Hoc Group, Mr. Nagi and I would like to publicly thank Brett Perry, Nicholas Farr, and Immanuel Herrmann, the founders of the Ad Hoc Group and its original steering committee members of which Mr. Herrmann was chair, who were dedicated from the onset to two guiding principles, parity among creditors and consensus building, and never wavered in serving the larger Earn community even at the expense of their individual interests.

The first test of the ad hoc's cohesiveness came with a July mediation before Judge Wiles. It also served as a reality check of what could be accomplished and what could not under the Bankruptcy code. The group's acceptance of certain constraints such as dollarization of crypto claims

on the petition date led to a successful mediation that set the treatment of Earn versus Borrower claims, led to the Borrower settlement, critical milestones on the path to plan confirmation among other things achieved in the mediation term sheet.

Having had a seat at the table at the mediation, the Ad Hoc and its larger constituency recognized the importance of keeping a seat at the table as future stockholders of Newco. This led to intense series of negotiations among the primary stakeholders, resulting in the Newco -- the three Newco board observer seats being designated by the Ad Hoc Earn Group and Earn designee appointed to the Litigation Oversight Committee responsible for prosecuting future litigation to enhance creditor recoveries, and lastly, to enter into a plan support agreement among the Debtors, the Committee, the Ad Hoc Earn Group, certain Earn pro se claimants, the class action plaintiff Mr. Tuganov, and Simon Dixon.

No one got everything they wanted in this case, but everyone had an opportunity to be heard in this courtroom and we appreciate that, Your Honor, as well as to be heard outside the courtroom in an unprecedented mix of media, mass emails, Twitters, telegram, Twitter spaces, town halls and YouTube presentations. The active participation of creditors in this case has set a new bar for creditor

engagement, enabling consensus building to occur and culminating in the astounding result of almost $2.5 billion in Earn claims voting to accept a plan in a crypto case.

No one did this alone, admittedly, but as a result of the dedication of many, including the tireless efforts of the Debtors' new management, the Committee, their respective counsel, and their professionals, in a very complex case which as you've heard had many, many active constituents and novel issues. In the end, the major stakeholders came together in their commitment to deliver the best outcome possible to creditors with the quickest exit achievable.

Now we are at the final stage. We look forward to a successful confirmation process and the long awaited start of distributions, hopefully in 2023, as well as the future opportunities presented to creditors as shareholders in Newco. Thank you, Your Honor for the time today on the agenda.

THE COURT: Thank you for your presentation. All right, counsel for the Ad Hoc Borrowers Group.

MR. ADLER: Good afternoon, Your Honor. David Adler from Carter & English on behalf of the Ad Hoc Group of Borrowers. First, I want to say it's again pleasure being back in this courtroom. This is only the second time that I've been here since COVID started. The first was in June, maybe July.

But I wanted to talk a little bit about the concerns of the Borrowers, and as Your Honor knows, the group that I represent are the group of individuals who transferred their crypto onto the Celsius platform in exchange for a loan and for which they paid interest. So they paid interest. They did not take interest out. And that was primarily a choice that they made because they wanted to have some liquidity against their crypto, but they didn't want to run the risk of having a disposition event because many, many of the borrowers and Celsius have extremely low basis. And a disposition event would be very, very bad in this case, especially for some of the higher borrowers.

So, going back in time to March, we were happy with the NovaWulf transaction because it kept the loan alive and following the auction, we received thereafter a plan that, in which the Debtor wanted to exercise its setoff rights, which would potentially be very, very bad for the Borrowers in terms of a disposition. And that was sort of the groundwork where we were when we got to the mediation.

So after three intensive days of mediation down the hall and upstairs, the Borrowers reached -- or the steering group reached a resolution on the issues in which the Borrowers would pay back the loans if they could. They were given the option to do that. As Mr. Koenig said

earlier, the Debtors have indicated that they'll cooperate in terms of finding a new lending source, and we've spent many, many, many hours since the mediation identifying new sources who can provide refinancing to the Borrowers. And in exchange for that, the excess claim is essentially, is treated as the Earn claim.

The Borrowers will get back 100 percent of their principal amount in crypto if it's Bitcoin and ETH, but not in the other currencies. So from the Borrowers' perspective, that was a result that they could live with. Certainly, the voting reflects that the Borrowers were -- that the plan was acceptable to the Borrowers, and I do want to say that probably the biggest issue in the mediation was over the liquid crypto weighted distribution because for the Borrowers that need to refinance, they need to get as much crypto as possible in order that their LTVs are in the range that traditional crypto lenders require. And it's hard to say that, traditional crypto lenders, but be that as it may.

So Your Honor, we have -- I worked consensually with the Debtors and the Committee. I want to thank Mr. Koenig, Mr. Kwasteniet, Mr. Colodny, Mr. Wofford for all their assistance over the last few months in trying to get to an achievable plan. We do have a couple of issues that will need to be addressed at some point. I mean, one issue and I've raised it with Mr. Koenig and Mr. Colodny. It's

not a big issue, but there's -- there was supposed to be an election on the ballot form for whether the Borrower wished to repay or not which did not make it on the ballot. Some subsequent form of notice needs to be sent out to the Borrowers so that they can make that election.

And there are also some timing issues that need to be addressed in the plan, but I consider those minor non-substantive issues in this plan. I mean, the result that was achieved at the mediation as a result of that --

THE COURT: How many Borrowers are there?

MR. ADLER: 23,000, Your Honor. Now, when I say 23,000, there are some Borrowers -- if you have Bitcoin and you had ETH, you show up twice on the spreadsheet. So when you cull all those out, it's probably more like 18,000 or so. Approximately half of them are in the United States; approximately half of them are international, with the biggest international locations being Australia, Spain. I think actually Poland is one of the largest jurisdictions and that's because the largest Borrower in this case who I've never spoken to, is apparently a resident of Poland. And you know, I mean, I think that that Europe and Australia dominate on the borrower side of the equation.

So, obviously we have a couple of issues to work out, but we are supportive of the plan. The voting reflects it. There have been people, Borrowers, who have asked Your

Honor for a ruling on the collateral and the only thing that I would say is we would ask Your Honor to limit that ruling to whether it is property of the estate or not, okay, so that we're not making any rulings about any other potential issues.

THE COURT: Okay, thanks, Mr. Adler.

MR. ADLER: Okay. Thank you, Your Honor. On that note, I will conclude.

THE COURT: Thank you. Thank you very much. I've said this before. I greatly appreciate what my colleague Judge Wiles did in the three-day mediation. There were lots of issues that got resolved. Essentially, it was very important to us being here today. I appreciate that.

All right, the Withhold Ad Hoc Group, Ms. Kovsky.

MS. KOVSKY-APAP: Good afternoon, Your Honor. Deb Kovsky, Troutman Pepper, on behalf of the Withhold Ad Hoc Group. As Your Honor knows, at the outset of these cases, the Withhold accountholders, including members of the Withhold Ad Hoc Group were kind of a weird no man's land on the Celsius platform. They weren't in the Earn program anymore and if the Debtors had been able to offer custody services in their states of residence, they would have been in Custody, but that wasn't the case. So instead their status was kind of ambiguous, neither fish nor fowl.

And the question of the status of their assets

could have been litigated all the way to resolution, possibly through appeals at great expense and uncertainty. Instead, the Withhold Ad Hoc Group, the Debtors, and the Committee found a more efficient pathway to deal with the complex and novel questions regarding property of the estate raised by the Withhold assets, and those discussions and pathway resulted in the Withhold settlement, a compromise that provided enhanced treatment for the Withhold accountholders while allowing a substantial bucket of assets to be treated as property of the estate.

And the settlement was embodied in the plan and has been overwhelmingly accepted by Class 7, the Withhold accountholders. The Withhold Ad Hoc Group appreciates the Debtors' and the Committee's willingness to work with us and to find a compromise solution that recognize the claims of the Withhold accountholders while avoiding the cost and complexity of an extended litigation.

Withhold Ad Hoc also appreciates the Debtors and the Committee working with us on our informal comments to the plan which obviated the need to file a formal objection. The Withhold Ad Hoc Group was concerned about the potential preclusive effect that the Debtors' calculation of withdrawal preference exposure under the plan might have. The Debtors and Committee agreed to add clarifying language that those calculations will not be binding on any defendant

in a subsequent avoidance action.

Even more importantly, the plan as it was originally solicited out appeared to give the plan administrator unfettered discretion to distribute fiat currency rather than cryptocurrency to accountholders. Now, we understand that the plan does provide for the retention of distribution agents for the purpose of distributing cryptocurrency, but those are time limited contracts and there was nothing in the plan that really pushed or encouraged the distribution of crypto rather than fiat.

And as Your Honor is well aware from the course of this case, and as Mr. Colodny alluded to, many accountholders feel very, very strongly about getting back crypto, not fiat currency . And this is particularly true in instances where there may be a delay in a claim becoming an allowed claim. So accountholders are very concerned about potentially not getting the benefit of the appreciation and value of crypto if the plan administrator could simply distribute fiat currency at some later point in time.

The Debtors and the Committee agreed to language requiring the plan administrator to use commercially reasonable efforts to make distributions in liquid cryptocurrency, rather than fiat, to the greatest extent possible. The language requires reserves on account of not yet allowed claims to be held in the form of liquid

cryptocurrency. And if by the time a distribution is to be made, there isn't a distribution agent around who can actually distribute crypto, the plan now requires that the crypto be converted to fiat as close to the distribution date as possible, the idea being that this would allow the amount of the fiat to mirror as closely as possible, the appreciated value of the crypto that otherwise would have been distributed.

And these changes provide important protections to accountholders. We really appreciate the constructive approach taken by the estate's professionals in negotiating these terms with us.

Finally, I wanted to say a couple of words about the ADR procedures. The Withhold Ad Hoc Group filed a reservation of rights with respect to the ADR procedures in connection with the disclosure statement hearing. Since then, we've had extended discussions with the Committee's professionals resulting in significant modifications to the proposed procedures.

The Committee has clarified that the procedures are not binding on anyone who did not file a proof of claim and revisions to the procedures which were filed as a redline also make it easier and more straightforward to opt out, and among other changes, make the flow of information between the parties mutual rather than one sided.

However, as I'm sure you'll hear more from Mr. Kleiner, the ADR procedures are not yet finalized and it does seem a little bit odd and perhaps premature for the Court to approve procedures that are still being discussed and negotiated.

The Withhold Ad Hoc Group did not see this as a basis to deny confirmation of a plan, particularly one with widespread support of creditors, including the members of the Withhold Ad Hoc Group themselves; however, we suggest it may make more sense to defer approval of the ADR procedures until they're more fully baked. But either way, whatever the Court rules, we will certainly continue to --

THE COURT: Speed up the process and finalize everything.

MS. KOVSKY-APAP: We are absolutely working on that. We are continuing to negotiate the procedures in good faith, exchanged emails today and we are working expeditiously. So, in conclusion, the Withhold Ad Hoc Group believes the plan is not perfect but no plan of reorganization ever is. We do believe that it is the best option under the circumstances and we are happy to join the Debtors, Committee, and other ad hoc groups in supporting it.

THE COURT: Thank you very much, Ms. Kovsky. All right. Next is Mr. Frishberg.

MR. FRISHBERG: Thank you, Your Honor. To start off with, I think everyone will agree that I'm direct and I speak my mind, so I will do so today. I believe that confirming this plan is the best path forward for creditors that we have at this time. And I'm not saying this only because I'm the PSA, I'm saying this because I truly believe it, that this is the best option we have currently.

The Debtors, the UCC, the U.S. Trustee, numerous regulators, all the professionals in this case, and more have done a very, very good job thus far. (indiscernible) know, this is a very complex and unusual case. The Debtors and the UCC have stated that accountholders overwhelmingly support the plan, including the visions about the EIP bonuses and releases.

I would like to add a bit of clarity to that. Something I have not heard mentioned thus far is that the reason people, creditors such as myself voted for it, it was the only option that was not a very bad scenario of the plan getting voted down. Customers are very openly against the overly, in my opinion, broad releases to the plan, but again, it is what it is, to (indiscernible) employees and as well in my opinion, the unnecessary (indiscernible) employees.

The reason they voted for it is as well as I did is because they want it to be over. An analogy that I think

sums this up well, is imagine that you are (indiscernible) deserted island in the middle of nowhere and then you find some moldy bread, a tiny bit of mold. You're going to eat the bread since it is better than starving to death. I know I would eat the bread and it seems about 98 percent of creditors chose to also eat the bread. Though I would love nothing more than to cut off the moldy parts which include the EIP bonuses and a few others. It's not an option, so I voted for the plan.

We must (audio glitch) and we must (audio glitch). This is (audio glitch) the plan being confirmed regardless of the presence of the metaphorical mold, trimming off the metaphorical small moldy parts would improve the plan, but slightly moldy bread is better than nothing in this scenario. Thank you, Your Honor.

THE COURT: Thank you very much, Mr. Frishberg. All right, Mr. Sabin, you're going to argue for Mr. Tuganov? Just so everybody knows, my plan is after Mr. Sabin, we have three more openings in opposition to the plan. We'll take a brief recess after Mr. Sabin and before we proceed with the remaining three. Mr. Sabin, good afternoon.

MR. SABIN: Thank you, Your Honor. It's a pleasure to be back here in person. It's a pleasure to hopefully soon stand here and thank many people for tireless work. I am Jeff Sabin from Venable on behalf of Ignat

Tuganov, a long time Earn rewards customer, creditor, one of three class representatives appointed pursuant to the now final order of this Court approving the settlement of the class proof of claim that among other things allowed noncontract claims for all accountholders.

And he was also and still is a party to the plan support agreement and spent the better part of his three days, and I did, too, before Judge Wiles. And you've already taken notice of the benefits of that.

I requested ten minutes to otherwise speak to support this plan, to cover matters material to confirmation not covered or otherwise that I thought needed to be supplemented by the very good efforts of all those who come before me, be it Debtors' counsel, UCC counsel, or other supporters. I'm happy to say that if I were a contestant on "Name That Tune," I can do it in two minutes.

But here goes. First and most importantly, you asked Mr. Colodny a question that I have a supplement to an answer. There is a provision in the order of approving the class settlement agreement, now final, that otherwise waived objections to otherwise trying to subordinate pursuant to 510(b) any of the claims of Earn customers and/or retail borrower customers.

Secondly, I believe that that the plan as amended is confirmable, not only because I have confidence that the

record will establish by all of the witnesses and the testimony to be educed that otherwise you can make findings of fact that would be supportive of confirmation, but also by the vote itself and the use of the vote in connection with three settlements, not that you otherwise approved, but are embedded in the plan including the retail borrower settlement, which has in it as a component part not yet mentioned in the record of an additional substantive consolidation of several lenders in this case and several debtors in this case.

And finally and most importantly, as you've heard, Mr. Tuganov is no different than all of the other customers. He is waiting and hopefully sees the light at the end of the tunnel, indeed, that the PSA milestones of October 31 for entry of a confirmation order and a December 31, 2023 effective date can be had.

In addition, as you heard from Mr. Colodny, there's no promise that all the conditions to the effective date can be done, but I think we are confident that the tireless efforts will continue, not just of the Debtors and the Committee and the U.S. Trustee, but the regulators themselves and of course, the plan sponsor such that the transparency referred to by Mr. Koenig is indeed going to be helpful to satisfy those conditions.

And so, like so many others, it has been a long

and winding road, and as the song goes, I hope that we soon get to sing a different tune. Maybe everyone can sing happy or at least happier. Thank you, Your Honor.

THE COURT: Thank you very much, Mr. Sabin. All right, we are going to take -- it's 3;40. We'll take a ten-minute recess. We'll resume at 3:50 and when we resume Mr. Ubierna, you're up next, okay? All right.

(Recess)

THE COURT: Everybody can sit down. All right, the Court is back in session. Mr. Ubierna, it's your turn for an opening statement.

MR. UBIERNA DE LAS HERAS: Good afternoon, Your Honor. Victor Ubierna, pro se creditor. Thank you for your time. First, English is not my native language as I am from Spain. So I ask that you forgive me if I make any mistake I speak in English. During this Chapter 11 bankruptcy, I have filed some objections and joinders. Since the beginning, I believe that while other people were just complaining in social media, the way to be useful to others was to file formal documents.

With regard to plan confirmation, I filed an objection with Docket No. 3542. This bankruptcy have been particularly difficult for many people, so I don't object to closing this difficult chapter in their lives. I objected to two items. First, regarding the emergence incentive

program, I argue that insider employees already receive salaries, that they have a fiduciary duty to act in the best interest of the company, and that the bar is very low for these rewards. For example, Ferraro will receive a bonus if this Court confirms a plan before the end of October. It is obvious that a Chapter 11 CEO should be working to get a plan confirmed.

Furthermore, a lot of the metrics are just what they should be doing as employees. These targets are objectives that are well within the scope and scale of their existing contractual obligations to the company as stakeholders and creditors. Some items haven't got numerical targets and (indiscernible) and can be easily abused.

Secondly, I also believe that the releases are too broad and that creditors did not have a real chance to opt out. (audio glitch) argue that the third party releases are wholly consensual; however, evidence does not point on that direction. I want to remark that a little more than 5,000 holders in voting classes that voted to accept the plan attempted to select the third-party release opt out and were not permitted to do so. How can they argue that releases are wholly consensual if 5,160 creditors are being forced into them against their will? I joined what the UST has just said about the releases.

Lastly, I do welcome the change that the Debtors made to the release and the exculpation provision. They clarify that what happened on the failure to file a proof of claim on the Voyager bankruptcy is not covered by those provisions. That is a good change in response to my objection. Thank you. Nothing more for today, Your Honor.

THE COURT: Thank you very much, Mr. Ubierna. You've been a regular participant in the hearings and I appreciate hearing from you. Thank you. All right, counsel for Pharos Fund.

MR. NOSKOV: Your Honor, Victor Noskov, Quinn Emanuel on behalf of Pharos. We're here today for an objection on the best interest of creditors test. The test is simple. It's simply whether the Debtors would realize more value under Chapter 7 than what they would realize under the plan as proposed by the Debtors.

As Your Honor aptly noted with regard to the CEL token valuation, the test, the burden is on the Debtors to prove that the test is satisfied and as long as the plan is not unanimous, and here our client has objected to the plan, they have to carry that burden.

Our simple position is that they have not, that there's insufficient evidence in support of the best interest of creditors test here. And that is for two reasons. On the one hand, in support of their plan, the

Debtors submit a liquidation analysis that is severely depressed.

THE COURT: It usually is.

MR. NOSKOV: Correct, Your Honor, but usually with justification. And in our view, the evidence this week will show that the severely depressed value which is by about 80 to 85 percent of the plan value -- and not just compared to the going concern value, but also to the orderly winddown value scenario under the plan, it's -- the Chapter 7 process is severely depressed.

I think the only real argument that is in the declaration supporting such devaluation of the liquidation analysis is a view that's expressed that a Chapter 7 Trustee whose fiduciary duty it is to maximize value of the estate for the creditors and who's empowered by the Bankruptcy Code to do so would not be able to run a proper sale process of these particular assets. And we intend to probe why the Debtors have arrived at that conclusion throughout this week, Your Honor.

THE COURT: You placed zero value on Newco.

MR. NOSKOV: I can get to Newco as well, Your Honor. I'm not so sure that we place zero value.

THE COURT: What value do you place on Newco?

MR. NOSKOV: We -- well, I think the question, Your Honor is whether the Debtors place the correct value --

THE COURT: I understand that, but do you place any value on Newco?

MR. NOSKOV: Yes, we --

THE COURT: What value do you place on Newco?

MR. NOSKOV: We think that the value -- that the -- we don't disagree with the inherent value that the Debtors present. We just think it should be severely discounted or discounted at all based on the several risk factors that the Debtors have themselves identified in these cases including in the disclosure statement.

THE COURT: So you're not disputing the value they place on it, but you, you believe it should be discounted from the value they placed on it?

MR. NOSKOV: I believe the way that they've arrived at the value, which again, will come in through evidence and we will probe exactly how they did so because we think the disclosure has not been sufficient, we believe that that testimony will show that they did not adequately discount it based on risk factors that they have identified themselves and based on how creditors have spoken in choosing their options under the plan.

So with that, Your Honor, I think that goes to the Newco value. That has nothing to do with the orderly winddown scenario which the Debtors propose, which is a value of $450 million for the assets, which compared to the

liquidation value, which is about 88, is significantly higher and I'm not sure why --

THE COURT: But you agree, I take it, that a comparator has to be the liquidation value, not the orderly winddown value, the comparator for the best interest test --

MR. NOSKOV: The best interest test should compare what would happen in a Chapter 7, the hypothetical Chapter 7 proceeding, versus the winddown value or the plan value, whichever one is more likely. It's a difficult comparison and we'll probe which one is really appropriate, but yes, it's what would happen in a Chapter 7 value, but I don't think that it's appropriate to devalue what would happen in a Chapter 7 by as much as the Debtors have done here. There are tools at the behest of the Chapter 7 Trustee that --

THE COURT: May I ask, do you plan to call any witnesses on liquidation value?

MR. NOSKOV: We ourselves are not in a position to put in witnesses ourselves. To the extent that the Court would be willing to override the deadlines that have occurred --

THE COURT: No, I -- the deadlines are the deadlines, but the deadline for those to submit direct written testimony in opposition to the plan hasn't run yet.

MR. NOSKOV: The deadline, I believe, Your Honor, for experts has passed and our client was not in a position

to do so. To the extent that Your Honor suggests we can put in affirmative evidence, we'd be glad to do so.

THE COURT: Bear with me a second. The order establishing case management procedures for the confirmation hearing is ECF 3478. In Paragraph 4 on page 3, says, "On or before 12 noon October 11th, 2023, all parties in interest shall file and docket written direct testimony under oath and copies of exhibits that they expect to offer in opposition to confirmation."

MR. NOSKOV: Your Honor, that that comes as a surprise to me and if that's the case --

THE COURT: It's on the docket. That's been -- you know, this order was entered on September 15th because I wanted to be sure everybody knew when they had to put in evidence.

MR. NOSKOV: I appreciate you pointing us to that order, Your Honor, and certainly something that we will consider. But my point today is only --

THE COURT: Here's what I want to know.

MR. NOSKOV: Sure.

THE COURT: Do you plan[to offer evidence or simply to cross examine the Debtors' witnesses -- Debtor and the Committee's witnesses?

MR. NOSKOV: We certainly intend to cross examine the Debtors' witnesses, Your Honor. Our client, given the

situation -- and certainly I can explain what it is --

THE COURT: I'm not interested in your client's situation --

MR. NOSKOV: -- has not, to this date, been able to -- we, with the client, have not gotten to a point where we can put in evidence affirmatively, but we may, Your Honor.

THE COURT: That's fine. You can cross examine their experts, but I just wanted to know -- October 11th was the deadline for anybody in opposition to confirmation to put in written evidence, and I was trying to ascertain whether it's your expectation that you're going to offer evidence by October 11, written evidence.

MR. NOSKOV: Your Honor, if I may, may I reserve on that and answer and --

THE COURT: Yes. The deadline hasn't come yet.

MR. NOSKOV: Thank you very much. Getting back to regardless of affirmative evidence, which we may or may not put forward, we think that on their own, the disclosures that are provided by the Debtors are insufficient to support the analysis that they provided. I think on the one hand, they depress value of a Chapter 7 process which actually Courts have called an orderly winddown just the same as what they're proposing with the orderly winddown scenario.

We think that the Chapter 7 Trustee is well within

its power to run a sophisticated process and so that discount is much too low. And on the other side of the equation, we think that appropriate discounts have not been applied to the value of the Newco and the other assets that would be, you know, part of the proposed plan.

We think that obviously the -- in some sense, the best interest of creditors is mathematical and so once you push one of those values up and one of them down, that the Debtors do not satisfy the test under 1129(a)(7), and therefore the claim should be rejected. And we think that, with just the bare conclusionary assertions that are in the declaration without further backup and without our ability to probe them in cross examination, the Debtors cannot satisfy the test.

THE COURT: Thank you.

MR. NOSKOV: Thank you.

THE COURT: All right. Harrison Schoenau. Is that you, Mr. Kleiner?

MR. KLEINER: Yes. Thank you. Thank you, Your Honor. Good afternoon.

THE COURT: Go ahead, Mr. Kleiner.

MR. KLEINER: Barry Kleiner from Kleinberg, Kaplan, Wolff & Cohen for Harrison Schoenau. I asked the Court for five minutes of time to frame our position and I very much appreciate the opportunity, but I hope to follow

Mr. Sabin's lead and he's much less than that.

To be clear, we are not objecting to the plan itself. Rather, we filed a limited response objecting solely to approval of the ADR procedures as implemented in the plan and as they apply to avoidance action defendants. We laid out the specific items we objected to in our response that was filed as Docket No. 3529 and the Debtor and Committee (indiscernible). I know that you'll read our objection and the responses, so I just wish to make two points today.

First, we are primarily here because the Committee has insisted on retaining the right to (indiscernible) ADR.

THE COURT: Say that again? I'm sorry, just repeat that.

MR. KLEINER: Yes, so we're primarily here because of the fact that the Committee has retained in the ADR procedures the right to force parties into ADR even if they (indiscernible). As Ms. Kovsky noted, we have been in discussion with them and the Committee, for example, has agreed that parties can't be forced to offer counter, but nonetheless, we're a bit troubled by the insistence that even if they (audio glitch) they're forced to proceed with ADR. We're troubled that that remains a (indiscernible).

The other point is, (audio glitch) I want to address, again, as Ms. Kovsky noted, the procedures aren't

yet complete. We have been, since the disclosure statement hearing -- and I don't want to understate this. In fact, the parties have been cooperating in good faith working together. The procedures that were filed in preparation for confirmation differ from those that were filed at the time disclosure statement and much progress has been made, but some items remain open.

Since the time we filed the objection and right now, the parties have been in communication and we expect that we'll continue to communicate and hopefully resolve these issues. But as we stand here today, it's not done yet and you don't have in front of you a final (audio glitch) procedures to approve.

So we ask two things. One, if Your Honor is to approve ADR (audio glitch), we understand why you might, you don't -- you approve them without the ability to force people who don't think it would be (audio glitch) to participate. And second, since the procedures still remain incomplete, you would delay approval until the parties have had a time to finish it.

I would just submit that there's really -- there's no urgency to this particular issue until the effective date. It's not something that has to be done by confirmation. Obviously, we would like to, but really, this is something that's only relevant when the plan is prepared

to go effective because it really deals with claims objections and avoidance actions which have not yet been brought. Thank you.

THE COURT: All right, let me just make a couple of comments on that. One, I think I commented earlier, speed it up, because assuming that the plan is confirmed, I don't want to leave issues hanging out there. Okay. This is a little different than some of the other issues, but it's my goal that everything be resolved if the plan is going to be confirmed.

Second, I'm not saying that the issues as to which the ADR proceeding -- procedures would apply are identical to the issues I've had in other cases, but I will just tell you, I have in large Chapter 11 cases, I have approved mandatory ADR procedures. You know, the issues here may be a little different. You may have arguments why you don't think it should be mandatory. But I -- in more than one large case, I have approved mandatory ADR procedures. Just saying that.

I may -- you know, you or somebody else may be able to persuade me, well, that should -- it should be different here for whatever the reason. Now is not the time to argue it. What I would urge is, and I appreciate you indicated certainly willingness to continue to do this, is try to hammer out these issues in a way that's consensual.

Okay?

MR. KLEINER: I agree, Your Honor. I think we just didn't quite have enough time --

THE COURT: And I understand that. Okay. All right. We have heard all of the opening statements from people who requested openings. The order that I had entered with the order in which, and the time allocation -- and I appreciate that everybody stuck to their time allocations. Very much appreciated.

So I wanted to talk -- and anybody who wants to be excused certainly can be. There were issues about how exhibits are going to be handled and I raised this in a prior hearing, just -- I conduct public trials. Sealing or redaction has to be an absolute minimum. And I wanted to cover some of those issues, and I didn't get a chance to look at over the weekend -- trust me, I was working on this -- the sealing motion that was made, so I want to get a better understanding.

So let me just make some general points on it and I'm willing to hear argument, and frequently it's the U.S. Trustee who rightfully, in my view, is defending what the Bankruptcy Code creates as the presumption that all these bankruptcy hearings are going to be public. I appreciate that. Okay. There are certain things, from what I've looked at and talked with my clerks about, that I have less

problem with that.

For example, the Debtor has unresolved litigation claims that it's pursuing. StakeHound, to -- just to name one. I certainly don't think that the Debtor should be obligated to file exhibits on the public -- unredacted exhibits on the public docket that say how they internally have assessed those claims. That's just an example.

So yes, there are things that should be redacted. How we deal with it during the hearing is -- also can be an issue. When I've had in other cases in trial where we don't -- where a witness is testifying and involves some redacted documents, we've usually tried to keep the test -- they've been directed, don't talk about the numbers that have been redacted, talk more generally, including a cross examination.

So yes, I have dealt with it in the past. So I would like to get a better idea. I guess the thing -- and I said this at the last hearing we had, when I heard that the Debtor was proposing a link on the docket that required people to sign a confidentiality agreement, that was unacceptable to me. So -- but go ahead.

MR. McCARRICK: Yes, Your Honor. The amended --

THE COURT: -- identify yourself.

MR. McCARRICK: I'm sorry. T.J. McCarrick, Kirkland & Ellis, on behalf of the Debtors. The Debtors

filed an amended motion to seal at Docket No. 3644. It supersedes the initial --

THE COURT: Okay.

MR. McCARRICK: -- request for sealing at Docket No. 3635. We've substantially narrowed the scope of information on the exhibit list that we seek to seal. It's only certain cells on four exhibits and candidly, Your Honor, it's not even clear that those are going to be offered into evidence. So I don't expect this is going to be an issue to your practical point of whether or you'll have to seal the courtroom or how we address it.

There are four Excels and there are tabs. So Exhibit 53, it's the Coin Manual Adjustment tab and it cells B15, B17, E15, to E17. For Exhibit 55, it's the Coin Manual Adjustments tab and cells B14 to B16, B101 to B103, E14 to E16, and E101 to E103. For Exhibit 56, again it's the Coin Manual Adjustments tab and it cells B14 to B16, B101 to B103, E14 to E16, and E101 to E103. And finally, it's Exhibit 62, it's the Coin Manual Adjustments tab, the Comments column and the CBP Illustrative Recovery tab, cells K55 to K57.

And what we're dealing with here, Your Honor, it's relating to litigation and asset recovery assessments. And so the redactions are pretty slim at this point.

THE COURT: Here's what I would ask you to do.

Maybe you've done it already. Confer with the Committee and the U.S. Trustee, and let's see if those parties are in agreement about it, and if they are, then I'm okay with sealing -- or redaction. It's not wholesale sealing, it's redacting certain cells -- subject to further order of the Court so that if evidence develops in a way that I -- that, you know, we have to address it, we'll address it.

But if the U.S. Trustee, the Committee and the Debtors agree on these redactions, we go forward on that basis subject to any subsequent Court ruling, which in principle what you describe, I understand the reason for doing that and I'm fine with it, okay. But I want you to have a discussion with the U.S. Trustee about it.

MR. McCARRICK: Yes, Your Honor.

THE COURT: Because what I found is they're the only ones who really try to protect the public interest and disclosure of what happens. Okay.

MR. McCARRICK: That's it, Your Honor.

THE COURT: Okay. I guess it was PII and --

MR. McCARRICK: Yeah, the --

THE COURT: The PII, I think I already said, absolutely should be redacted.

MR. McCARRICK: Yes. Just, last, one housekeeping matter. To the extent that the Debtors are going to use demonstratives with any of their exhibits, do you want those

filed 5 p.m. the docket the day before or just use them in Court?

THE COURT: I would like them filed before, for this reason. Obviously, we start the evidence tomorrow. The public and the media are not permitted under new guidance from the Administrative Office of the Courts, they're not permitted -- they're only permitted to be in the courtroom or we have an overflow room if we need it, but there are parties in interest who are appearing remotely and so that we don't have any delays. If you're going to use demonstratives, post them the night before so that anybody who wants access to it can see that.

Demonstratives typically are not introduced in evidence. They are -- they're illustrative for purposes of testimony and used for that purpose, but it would be helpful if demonstratives are filed the -- you know, by five o'clock the day before they're going to be used.

MR. McCARRICK: Yes, Your Honor.

THE COURT: Okay? All right. So does anybody else have any other issues either about exhibits or anything else in terms of our procedures that we're going to be following during the trial? Mr. McCarrick, shouldn't have sat down so quickly.

MR. McCARRICK: I know. For folks who are appearing virtually who may cross examine using exhibits, I

guess I seek the Court's guidance on how that should be handled because the witness may not have a copy. As far as I can tell, there's been no exhibit list disclosed by anyone other than the Committee and the Debtors. That's just the one practical question I have.

THE COURT: That's true. I would say this. If anyone who is appearing remotely, any party in interest appearing remotely, who wishes to cross examine any of the witnesses and wishes to use exhibits that are not already marked, they should also post them on the docket by 5 p.m. the day before a witness is testifying. Okay. So there often is an exception for impeachment exhibits, but we're not -- because we're doing this with remote access and -- look, I've appreciated, you know, at one point early in this case, we had 786 people on Zoom.

And what it is demonstrated to me, is it has really helped with the transparency of the bankruptcy proceeding. If there are people on Zoom who are going to cross examine witnesses, they'll have to, you know, use the raise hand function to be recognized to do that. Obviously, cross examination needs to be limited to the scope of the direct examination that's occurred, but I want to be -- give some leeway to people, particularly nonlawyers in their examination. I certainly reserve the right either to sustain objections that are made or myself limit the cross

examination that can be done.

But it's a new world with us trying to do -- particularly in a case like this where there are so many creditors who are not in the New York metropolitan area who want to appear, and if they wish to cross examine. So, yes, I'm directing that if you're going to appear and cross examine remotely, if you intend to use any exhibits, you're going to need to post them as proposed cross examination exhibits by 5 p.m. the day before a witness testifies, which necessarily is going to require that the parties here who are calling witnesses disclose the day before who the witnesses are going to be for the next day.

MR. McCARRICK: Yes, Your Honor. Do you want us to file that on the docket?

THE COURT: I think you should, because again, we've got people appearing remotely.

MR. McCARRICK: Yes, Your Honor.

THE COURT: And I think in response to a question for clarification that the Debtors had asked, if, rather than having to recall witnesses during the opposition case, you know, I'm not going to limit cross examination to the scope of the direct, if someone was planning on calling someone as part of their main case. There's no jury. We'll do it. I want, to the fullest extent possible, that a witness when they testify and they're done, they're done.

They don't have to come back. So, okay. Any other questions, Mr. McCarrick?

MR. McCARRICK: I can't promise in between here and there, but thank you.

THE COURT: Good exercise. Anybody else have any other issues they want to raise about how we're going to be proceeding? Mr. Koenig, who are we going to hear from tomorrow? Well, I picked on you, Mr. Koenig, but if somebody else -- if Mr. McCarrick wants to get up again, he can.

MR. McCARRICK: This has been very special for me, yes, Your Honor.

THE COURT: I'm sure.

MR. McCARRICK: We anticipate tomorrow calling Mr. Ferraro, Mr. Kokinos, potentially Mr. Kielty, Mr. Cohen. I would expect that would --

THE COURT: Okay.

MR. McCARRICK: -- likely be it. Those are at least four.

THE COURT: So my expectation, we're going to start at nine. We'll take a recess. We'll take one break in the morning and then a lunch break and then we'll continue probably until five o'clock is my expectation. My pattern has been that if a witness is almost done for the day, we'll go late. Okay, try -- so they don't have to come

back the next morning. Okay?

MR. McCARRICK: Thank you again, Your Honor.

THE COURT: Go ahead and sit down again, Mr. McCarrick. Anybody have a question for Mr. McCarrick, if we want him to come back. All right. I will see you all in the morning, okay?

CLERK: Judge, there's two parties on Zoom that are -- have their hand up.

THE COURT: Okay, I didn't see that. Okay.

CLERK: Yeah.

THE COURT: Yes?

MR. KIRSANOV: Good afternoon, Your Honor. Dimitry Kirsanov, pro se creditor. I was not listed on the objections and I have concerns that involve best interest and adverse amendments to the plan after the vote, ballot valuation issues, and continued lack of clarity regarding CEL valuation and custody in Hawaii. I was wondering if I could be heard today.

THE COURT: Not in an opening statement. I made clear that the opening statements request had to be filed by the deadlines that I gave. I've heard everyone. I respected the time request that everyone had made. I'm not going to reopen -- this doesn't preclude you -- let me make clear. This does not preclude you from examining witnesses on these issues. The only thing that I did was fix a

specific date and time as a deadline for requests for opening statements.

So it doesn't preclude you from raising this issue during the trial, cross examining where appropriate, but no more opening statements today.

MR. KIRSANOV: Thank you, Your Honor.

THE COURT: Okay. Anybody else wish to be heard on Zoom?

CLERK: I don't see any additional hands, Judge.

THE COURT: Okay. Thank you very much. I'll see everybody in the morning.

(Whereupon these proceedings were concluded at 4:23 PM)

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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Date: October 3, 2023

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